THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23208 OF 1999

DATED 26.10.2005

Between:

Kolli Yesuratnam

S/o. Papaiah

R/o.Seethapalli Village,

Rampachowdavaram Mandal

East Godavari District and others

… Petitioners

And

The Agent to the Government,

East Godavari District, Kakinada

East Godavari District, and others.

…Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.23208 of 1999

ORDER:

The dispute, in this writ petition, is in respect of land admeasuring Acs.0.58 (wetland) in survey No.181/6, Acs.0.38½ (dry land) in survey No.6/4 and Acs.0.72 (dry land) in survey No.7/2 situated in Sarabavanam Village of Devipatnam Mandal in East Godavari District. One Nelapati Ganneyya was absolute owner of the land. The petitioners claim that after his death, their mother, as the only legal heir, was enjoying the property. The fourth respondent herein claiming to be wife of Ganneyya filed a petition under A.P. (Andhra Area) Tenancy Act, 1956 being A.T.P. No.2 of 1974 on the file of Deputy Tahasildar, Rampachodavaram for eviction of Kolli Papaiah, who is the father of the petitioners herein. By an order dated 17.8.1976, the said authority dismissed the case, observing that Kantamma, fourth respondent herein, failed to establish tenancy and that the said Court is not competent to decide the ownership of the land. In the meanwhile, Kantamma appears to have obtained a

ryotwari patta under A.P. (Scheduled Areas) Ryotwari Settlement Regulation, 1970.

In 1989, the fourth respondent filed O.S. No.1 of 1989 on the file of Mandal Executive Magistrate and Agency Munsif, Devipatnam against the children of Kolli Papaiah, the petitioners herein. The said suit is for injunction. On 01.7.1991, the said suit was dismissed observing that the title was vested with Kantamma, the fourth respondent herein, by virtue of ryotwari patta. The petitioners herein filed A.S. No.1 of 1991 before the Sub Divisional Magistrate, Rampachodavaram, the second respondent herein. In A.S. No.1 of 1991, the fourth respondent herein remained *ex parte* and by an order dated 14.10.1992 the A.S.No.1 of 1991 was allowed. Pending the appeal, it appears a Receiver was appointed, who delivered possession to fourth respondent herein. Be that as it is, the petitioners filed C.M.P. No.1 of 1993 before the second respondent for redelivery of possession and the said application was transmitted to third respondent. The third respondent by an order dated 12.7.1994 directed the Mandal Revenue Inspector to redeliver possession of the land to the petitioners. Against the orders of the third respondent, the fourth respondent preferred appeal before the second respondent, who renumbered the application as O.S.No.1 of 1994. In the said O.S., the fourth respondent remained *ex parte* and therefore the second respondent passed orders in favour of the petitioners. Aggrieved by the same, the fourth respondent filed C.M.A. No.1 of 1994 before the Sub-Divisional Magistrate, Rampachodavaram, the second respondent herein, who by order dated 15.6.1995 allowed the C.M.A., observing that the lease even by a non-tribal is prohibited by A.P. Schedule Areas Land Transfer Regulations 1959 and that by reason of the patta granted to her under Schedule Areas Ryotwari Settlement Regulation, the fourth respondent has title to the property. Aggrieved by the said orders of the second respondent, petitioners filed appeal being A.S.No.1 of 1995 before the first respondent and also filed I.A.No.17 of 1995 for stay of the orders passed in C.M.A.No.1 of 1994. In the said I.A., the first respondent passed orders on 24.10.1995 observing that the appeal is not maintainable. The petitioners thereafter filed W.P. No.29004 of 1995 before this Court. This Court by an order dated 13.11.1996 allowed the writ petition filed by the petitioners herein and remitted the matter to the first respondent to consider the matter and dispose of in accordance with law. After the remand, the first respondent passed impugned order on 12.4.1998, after renumbering A.S.No.1 of 1995 as A.S. No.1 of 1997, dismissing the appeal of the petitioners. Aggrieved by which the present writ petition is filed.

The learned Counsel for the petitioners, Sri P.Sridhar Reddy, submits that the non-speaking order passed by the first respondent is unsustainable in law. He also submits that it was improper for the second respondent, who has treated the C.M.P. filed by the petitioners for redelivery of the possession as a suit, and that the second respondent was bound to pass orders in accordance with the appellate order in A.S. No.1 of 1991. He also submits that the orders passed in A.T.P. have become final and therefore any orders passed by the second respondent in O.S. No.1 of 1994 are without jurisdiction. He contends that there is no provision in A.P. Agency Rules, 1994 (Agency Rules, for short) enabling the first respondent to entertain an appeal against the orders passed by the third respondent.

The learned Government Pleader for Social Welfare and the learned Counsel for

fourth respondent, Sri S.R.Sanku, submit that the fourth respondent was granted a ryotwari patta on 24.1.1976 and therefore she alone is the rightful owner of the property. They also submit that the earlier proceedings between the contesting parties arose only out of suits for injunction or petition for eviction and they did not in any manner prohibit the authorities from upholding the title of the fourth respondent. It is further contended that after the second respondent allowed the appeal in A.S.No.1 of 1991, the petitioners filed C.M.P. No.1 of 1993, which was transferred to third respondent, who renumbered as O.S. No.1 of 1994. The petitioners did not raise any objection at that stage and therefore, they cannot now be permitted to take such a plea. According to the learned Counsel, the reasons recorded by the first respondent are adequate reasons.

Initially, the first respondent by an order dated 24.10.1995 dismissed the appeal filed by the petitioners as not maintainable. The same was challenged before this Court in W.P.No.29004 of 1995. This Court, while disposing of the said writ petition, observed that even if an appeal is not maintainable on any of the grounds specified in Section 100 of Civil Procedure Code, 1976, the first respondent cannot dismiss the appeal in a summary manner and that he should discuss the reasons, as questions of fact can also be gone into in special circumstances. After referring to the provisions of Rule 47(2) of Agency Rules, this Court observed as under.

> A plain reading of the said rule would indicate that from every appellate decree passed by an Agency Divisional Officer as appeal shall lie to the Agent to the State Government on the grounds specified in Section 100 of the Civil Procedure Code. The Rule however further clarifies that for the reasons to be recorded by the Agent to the State Government may admit special appeal even on questions of fact. It would mean that the agent to the Government while exercising the appellate power in appropriate case may even go into the questions of fact and decide the appeal. It is thus clear that the appellate authority viz., the Agent to the Government is bound to consider the appeal if the grounds raised in the memorandum of appeal are similar as specified in Section 100 of the Civil Procedure Code. The rule does not give any authority to the Agent to the Government to dismiss the appeal in a totally summary manner. May be, it is open to the said appellate authority to record the reasons that none of the grounds specified in Section 100 of the Civil Procedure Code arise for consideration by it.

This Court has categorically directed the appellate authority to record reasons while disposing of the appeal preferred by petitioners. Unfortunately, the appellate authority by impugned order did not give any reasons and passed brief order. For this reason alone, the order of the first respondent cannot be sustained. It is liable to be set aside remanding the matter to first respondent for fresh disposal.

Accordingly, for the above reasons, the writ petition is allowed. The impugned order passed by the first respondent is set aside and the matter is remitted to the first respondent for fresh disposal in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Be it made clear, the first respondent shall consider all the facts of the case, the issues that would arise for consideration, the submissions made by the Counsel for the petitioners and give reasons for

accepting or rejecting the submissions. No costs.

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(**V.V.S. RAO,J**)

October 26, 2005

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